

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| FRANK LORD, et al. |) | CASE NO. 1:17-cv-01739-DCN |
| |) | |
| Plaintiffs, |) | JUDGE DONALD C. NUGENT |
| |) | |
| v. |) | |
| |) | DEFENDANT KISLING, NESTICO & |
| KISLING, NESTICO & REDICK, LLC, ET |) | REDICK, LLC'S MOTION TO |
| AL., |) | CLARIFY DEADLINE TO FILE A |
| |) | MOTION TO DISMISS |
| Defendants. |) | |

Defendant Kisling, Nestico & Redick, LLC (“KNR”) moves the Court to enter an Order granting KNR until March 30, 2018, in which to file a motion dismiss, or other responsive pleading, to Plaintiffs’ Amended Complaint.

The Court previously set a deadline of March 12, 2018, for KNR to file a Motion to Dismiss Plaintiffs’ Amended Complaint (“Motion”). (Doc. 25.) After issuing this Order, the Court stayed all proceedings pending a decision in *ACA Int’l v. FCC*, No. 15-1211 (D.C. Cir.). (Doc. 26.) While the Order permitted KNR to file a Motion after the stay was lifted, the Order did not specify the deadline for filing. As set forth in KNR’s Notice concomitantly filed with this Motion, a decision was issued in *ACA Int’l* this morning. *See* 2018 U.S. App. LEXIS 6535.

The D.C. Circuit’s decision in *ACA Int’l* is expansive and, amongst other things, rolls back nearly 15 years worth of FCC opinions regarding the standard for what constitutes an “automatic telephone dialing system” under the Telephone Consumer Protection Act. *See id.* at *30 (“The agency reasons that the issue was resolved in prior agency orders-specifically, declaratory rulings in 2003 and 2008 [regarding] the statutory definition of an ATDS ... [and

that] it is too late now to raise a challenge by seeking review of a more recent declaratory ruling that essentially ratifies the previous ones. We disagree.”).

In light of the significance of *ACA Int’l* and impact it will have on KNR’s forthcoming Motion, and as no deadline has been currently set for KNR to seek dismissal of, or respond to, Plaintiffs’ Amended Complaint after lifting of the stay, KNR respectfully requests until March 30, 2018 in which to file its Motion to Dismiss.

Respectfully submitted,

s/ David M. Krueger

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CERTIFICATE OF SERVICE

This is to certify that the foregoing *Defendant Kisling, Nestico & Redick, LLC's Motion to Clarify Deadline to File a Motion to Dismiss* was filed electronically on March 16, 2018 in accordance with the Court's Electronic Filing Guidelines. Notice of this filing will be sent to all properly registered parties by operation of the Court's electronic case filing system.

s/ David M. Krueger

*One of the Attorneys for Defendant Kisling,
Nestico & Redick, LLC*